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Prepared By _____

Approved By _____

An act to amend Sections 25214.1, 25214.2, 25214.3, 25214.3.1, 25214.3.3, and 25214.4 of, to amend the heading of Article 10.1.1 (commencing with Section 25214.1) of Chapter 6.5 of Division 20 of, and to add Sections 25214.2.1 and 25214.2.2 to, the Health and Safety Code, relating to hazardous substances, and making an appropriation therefor, to take effect immediately, bill related to the budget.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The heading of Article 10.1.1 (commencing with Section 25214.1) of Chapter 6.5 of Division 20 of the Health and Safety Code is amended to read:

Article 10.1.1. ~~Metal-Containing Jewelry~~ Toxic Metals in Jewelry Prevention Act

SEC. 2. Section 25214.1 of the Health and Safety Code is amended to read:

25214.1. For purposes of this article, the following definitions shall apply:

(a) "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(b) "Children" means children ~~six~~ 12 years of age ~~and~~ or younger.

(c) "Children's jewelry" means jewelry that is ~~made for, marketed for use by,~~ or marketed to, designed or intended for children. For purposes of this article, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalog, or online Internet Web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalog, or online Internet Web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(5) A legible statement by the manufacturer that reasonably communicates the intended use of the product, including a label on the product.

(6) Whether the jewelry is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

(d) (1) “Class 1 material” means any of the following ~~materials~~ materials, unless the material contains intentionally added lead or has been treated in a way that adds lead:

(A) Stainless or surgical steel.

(B) Karat gold.

(C) Sterling silver.

(D) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

(E) Natural or cultured pearls.

(F) Glass, ceramic, or crystal decorative components, including cat’s eye, cubic zirconia, including cubic zirconium or CZ, and rhinestones, ~~and~~ ~~eloisone~~.

(G) A gemstone that is cut and polished for ornamental purposes, except as provided in paragraph (2).

(H) Elastic, fabric, ribbon, rope, or string, unless it ~~contains intentionally added lead and~~ is listed as a class 2 material.

(I) All natural decorative material, including amber, bone, coral, feathers, fur, horn, leather, shell, or wood, that is in its natural state and is not treated in a way that adds lead.

(J) Adhesive.

(2) The following gemstones are not class 1 materials: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

(e) "Class 2 material" means any of the following materials:

(1) Electroplated metal ~~that meets the following standards:~~ alloy.

~~(A) On and before August 30, 2009, a metal alloy with less than 10 percent lead by weight that is electroplated with suitable under and finish coats.~~

~~(B) On and after August 31, 2009, a metal alloy with less than 6 percent lead by weight that is electroplated with suitable under and finish coats.~~

(2) Unplated metal with less than 1.5 percent lead that is not otherwise listed as a class 1 material.

(3) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) ~~that meets the following standards:~~

~~(A) On and before August 30, 2009, less than 0.06 percent (600 parts per million) lead by weight.~~

~~(B) On and after August 31, 2009, contains less than 0.02 percent (200 parts per million) lead by weight.~~

(4) A dye or surface coating containing less than 0.06 percent (600 parts per million) lead by weight.

(f) “Class 3 material” means any portion of jewelry that meets both of the following criteria:

(1) Is not a class 1 or class 2 material.

(2) Contains less than 0.06 percent (600 parts per million) lead by weight.

(g) “Component” means any part of jewelry.

(h) “Jewelry” means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Hair accessory.

(I) Earring.

(J) Necklace.

(K) Pin.

(L) Ring.

(M) Tie clip.

(N) Body piercing jewelry.

(O) Jewelry placed in the mouth for display or ornament.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an ornament specified in paragraph (1).

(4) A watch in which a timepiece is a component of an ornament specified in paragraph (1), excluding the timepiece itself if the timepiece can be removed from the ornament.

(i) (1) “Surface coating” means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, that changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

(2) “Surface coating” does not include a printing ink or a material that actually becomes a part of the substrate, including, but not limited to, pigment in a plastic article, or a material that is actually bonded to the substrate, such as by electroplating or ceramic glazing.

SEC. 3. Section 25214.2 of the Health and Safety Code is amended to read:

25214.2. (a) A person shall not manufacture, ship, import, sell, offer for sale, or offer for promotional purposes jewelry for retail sale or promotional purposes in the state, unless the jewelry is made entirely from a class 1, class 2, or class 3 material, or any combination of those materials.

~~(b) Notwithstanding subdivision (a), a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes children's jewelry for retail sale or promotional purposes in the state, unless the children's jewelry is made entirely from one or more of the following materials:~~

~~(1) A nonmetallic material that is a class 1 material and that does not otherwise violate the requirements of paragraph (4).~~

~~(2) A nonmetallic material that is a class 2 material.~~

~~(3) A metallic material that is either a class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight.~~

~~(4) Glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead.~~

~~(5) Printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight.~~

~~(6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.~~

~~(c)~~

(b) Notwithstanding subdivision (a), a person shall not manufacture, ship, import, sell, offer for sale, or offer for promotional purposes body piercing jewelry for retail sale or promotional purposes in the state, unless the body piercing jewelry is made of one or more of the following materials:

(1) Surgical implant stainless steel.

(2) Surgical implant grade of titanium.

(3) Niobium (Nb).

(4) Solid 14 karat or higher white or yellow nickel-free gold.

(5) Solid platinum.

(6) A dense low-porosity plastic, including, but not limited to, Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

~~(d) Notwithstanding subdivision (d) of Section 25214.3, as of January 1, 2012,~~

a

(c) A person shall not manufacture, ship, import sell, offer for sale, or offer for promotional purposes children's jewelry that contains any component or is made of any material that is more than 0.03 percent cadmium (300 parts per million) by weight. This subdivision shall not apply to any toy regulated for cadmium exposure under the federal Consumer Product Safety Improvement Act of 2008 ~~(P.L. 110-314)~~ (Public Law 110-314).

~~(e)~~

(d) The department may establish a standard for children's jewelry or for a component of children's jewelry that is more protective of public health, of sensitive subpopulations, or of the environment than the standard established pursuant to subdivision ~~(d)~~ (c).

SEC. 4. Section 25214.2.1 is added to the Health and Safety Code, to read:

25214.2.1. Notwithstanding Section 25214.2, a person shall not manufacture, ship, import, sell, offer for sale, or offer for promotional purposes children's jewelry for retail sale or promotional purposes in the state if that children's jewelry is any of the following:

(a) A banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. Sec. 1261 et seq.).

(b) A banned hazardous product under the federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 et seq.).

(c) Contains lead in excess of the lead limits in the federal Consumer Product Safety Improvement Act of 2008 (15 U.S.C. Sec. 1278a(a) or (f)).

SEC. 5. Section 25214.2.2 is added to the Health and Safety Code, to read:

25214.2.2. (a) Notwithstanding Section 25214.2, and in addition to the prohibition of Section 25214.2.1, a person shall not manufacture, ship, import, sell, offer for sale, offer for promotional purposes, or offer for retail sale in the state children's jewelry with a surface coating material that contains the following compounds and for which the metal content of soluble material is in excess of the following levels by weight of the contained solids, including, but not limited to, pigments, film solids, and driers:

- (1) Sixty parts per million for antimony.
- (2) Twenty-five parts per million for arsenic.
- (3) One thousand parts per million for barium.
- (4) Seventy-five parts per million for cadmium.
- (5) Sixty parts per million for chromium.
- (6) Ninety parts per million for lead.
- (7) Sixty parts per million for mercury.
- (8) Five hundred parts per million for selenium.

(b) The test methods for determining compliance with this section shall be conducted using the ASTM International Standard F963–07 Standard Consumer Safety Specification for Toy Safety (ASTM F963), for the material being tested, except as otherwise provided in Sections 25214.4.1 and 25214.4.2.

SEC. 6. Section 25214.3 of the Health and Safety Code is amended to read:

25214.3. (a) Except as provided in Sections 25214.3.3 and 25214.3.4, a person who violates this article shall not be subject to criminal penalties imposed pursuant to this chapter and shall only be subject to the administrative or civil penalty specified in subdivision (b).

(b) (1) A person who violates this article shall be liable for an administrative or a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation. That administrative or civil penalty may be assessed and recovered in an administrative action filed with the Office of Administrative Hearings or in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of an administrative or a civil penalty for a violation of this article, the presiding officer or the court, as applicable, shall consider all of the following:

- (A) The nature and extent of the violation.
- (B) The number of, and severity of, the violations.
- (C) The economic effect of the penalty on the violator.
- (D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.
- (E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Administrative and civil penalties collected pursuant to this article shall be deposited in the Toxic Substances Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article, except as provided in Section 25192.

(d) (1) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(A) Enter a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell jewelry; or enter a place where jewelry is being held or sold.

(B) Inspect a factory, warehouse, establishment, vehicle, or place described in subparagraph (A), and all pertinent equipment, raw material, finished and unfinished materials, containers, cargo containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold, this inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the jewelry is being manufactured, packed, held, transported, sold, or offered for sale or for promotional purposes in violation of this article.

(2) (A) An authorized representative of the department may secure a sample of jewelry, multiple samples, or multiple duplicate samples, when taking an action authorized pursuant to this subdivision. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(B) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(C) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(3) An authorized representative of the department shall have access to all records of a carrier in commerce relating to the movement in commerce of jewelry, or the holding of that jewelry during or after the movement, and the quantity, shipper, and consignee of the jewelry. A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of jewelry in the usual course of business as a carrier.

(4) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

SEC. 7. Section 25214.3.1 of the Health and Safety Code is amended to read:

25214.3.1. (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare and, at the request of the department, submit to the department no more than 28 days after the date of the request,

technical documentation or other information showing that the jewelry is in compliance with the requirements of this article. If the jewelry contains a Class 2 or Class 3 material, the certification shall be based on testing conducted in accordance with Sections 25214.4 and 25214.4.1.

(b) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare a certification. This certification shall attest that the jewelry does not contain a level of lead or cadmium that prohibits the jewelry from being sold or offered for sale pursuant to this article.

(c) A manufacturer or supplier of jewelry sold or offered for promotional purposes in this state shall do either of the following:

(1) Provide the certification required by subdivision (b) to a person who sells or offers for sale that manufacturer's or supplier's jewelry.

(2) Display the certification required by subdivision (b) prominently on the shipping container or on the packaging of jewelry.

(d) A manufacturer of children's jewelry sold, offered for sale, or offered for promotional purposes in this state shall, in the addition to the requirements of subdivisions (a), (b), and (c), do all of the following:

(1) Provide a certificate to each distributor or retailer of the product for all of the children's jewelry consistent with product certification requirements set forth in Section 1278(a) of Title 15 of the United States Code.

(2) Provide a certificate to each distributor or retailer of the product based on a third-party conformity assessment body accredited by the United States Consumer Product Safety Commission that complies with third-party testing requirements and

product certification requirements set forth in Section 2063 of Title 15 of the United States Code.

(3) Place a permanent, distinguishing mark on the children's jewelry and its packaging consistent with the requirements set forth in Section 2063 of Title 15 of the United States Code.

SEC. 8. Section 25214.3.3 of the Health and Safety Code is amended to read:

25214.3.3. A manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, imports, sells, offers for sale, or offers for promotional purposes jewelry containing lead or cadmium in violation of this article is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

SEC. 9. Section 25214.4 of the Health and Safety Code is amended to read:

25214.4. (a) The test methods for determining compliance with this article shall be conducted using the following methods, whichever is applicable, for the material being tested, except as otherwise provided in Sections 25214.4.1 and 25214.4.2, and in accordance with all of the procedures specified in subdivision (b):

(1) The EPA reference methods 3050B, 3051A, and 3052, as specified in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (Third Edition, as currently updated) for the material being tested,~~except as otherwise provided in Sections 24214.4.1 and 25214.4.2, and in accordance with all of the following procedures:~~

(2) The applicable test methods approved by the United States Consumer Product Safety Commission, as follows:

(A) CPSC-CH-E1001-08.1 (Standard Operating Procedure for Determining Total Lead (Pb) in Metal Children's Products (Including Children's Metal Jewelry), Revised, June 21, 2010.

(B) CPSC-CH-E1002-08.1 (Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products, Revised, June 21, 2010).

(C) CPSC-CH-E1003-09.1 (Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, February 25, 2011).

(3) ASTM International Standard F963-08 Consumer Safety Specification for Toy Safety (ASTM F963).

(b) The following procedures shall be used for compliance with this section:

~~(a)~~

(1) When preparing a sample, the laboratory shall make every effort to ensure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the jewelry component to be tested.

~~(b)~~

(2) All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment.

~~(c)~~

(3) If a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting or scraping shall be made of stainless steel and washed and rinsed before each use and between samples.

~~(d)~~

(4) A sample shall be digested in a container that is known to be free of lead and cadmium and with the use of an acid that is not contaminated by lead or cadmium, including analytical reagent grade digestion acids and reagent grade deionized water.

~~(e)~~

(5) Method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested.

~~(f)~~

(6) The results for the method blanks shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

~~(g)~~

(7) Test methods selected shall be those that best demonstrate they can achieve total digestion of the sample material being analyzed. Test methods shall not be used if they are inconsistent with the specified application of the test method or do not demonstrate the best performance or proficiency for achieving total digestion of the sample material.

SEC. 10. The sum of one thousand dollars (\$1,000) is hereby appropriated to the Department of Toxic Substances Control from the Hazardous Waste Control Account

to implement the changes made by this act to Article 10.1.1 (commencing with Section 25214.1) of Chapter 6.5 of Division 20 of the Health and Safety Code.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately

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Approved By _____

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Hazardous substances: toxic metals: jewelry.

(1) Existing law prohibits any person from manufacturing, shipping, selling, or offering for sale or promotional purposes jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials. Existing law, for purposes of those provisions, defines, among other terms, “children,” “children’s jewelry” and “class 1” and “class 2” materials.

This bill would revise the definitions of those terms and would additionally prohibit the importing of jewelry for retail sale in the state that is not made entirely from those specified materials.

(2) Existing law also prohibits any person from manufacturing, shipping, selling, or offering, for sale or promotional purposes, children’s jewelry, as defined, unless the children’s jewelry is made entirely of specified materials.

The bill would repeal that prohibition with regard to children's jewelry and would instead prohibit a person from manufacturing, shipping, importing, selling, offering for sale, or offering for promotional purposes children's jewelry in the state if that children's jewelry is a banned hazardous substance or a banned hazardous product under specified federal law, or if it contains lead in excess of the lead limits specified in federal law. The bill would additionally prohibit a person from taking those actions with regard to children's jewelry that has a surface coating material for which the metal content exceeds specified levels.

(3) Existing law requires a manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes to prepare a specified certification.

This bill would additionally require a manufacturer of children's jewelry sold or offered for sale, or offered for promotional purposes, to provide to each distributor or retailer of the product a certificate consistent with product certification requirements set forth in the federal Consumer Product Safety Act and a certificate based on a 3rd-party conformity assessment body accredited by the United States Consumer Product Safety Commission, and to place a permanent, distinguishing mark on the children's jewelry and its packaging.

(4) Existing law specifies testing methods for the testing of jewelry subject to the prohibitions specified above.

This bill would revise those testing procedures to include other specified test methods.

(5) Existing law imposes criminal penalties upon a manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or

offers for promotional purposes jewelry containing lead or cadmium in violation of those provisions or who knowingly and with intent to deceive falsifies any document or certificate required to be kept or produced pursuant to those provisions.

This bill would additionally include the importing of that jewelry in that penalty provision. This bill would impose a state-mandated local program by creating new crimes with regard to the sale, importing, or offering for sale of this jewelry and the preparation of certifications and documents.

(6) The bill would appropriate \$1,000 from the Hazardous Waste Control Account to the Department of Toxic Substances Control to implement the changes made by the bill.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.